

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	) Case Number: C 14-03640-CW
Plaintiffs,	)	) <b>DECLARATION OF MICHAEL P.</b>
vs.	)	) <b>KELLA IN SUPPORT OF PLAINTIFFS'</b>
CANON, INC., et al.,	)	) <b>MOTION FOR LEAVE TO AMEND</b>
Defendants.	)	) <b>THEIR INFRINGEMENT</b>
	)	) <b>CONTENTIONS PURSUANT TO P.R. 3-6</b>
TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	)
Plaintiffs,	)	) Case Number: C 14-03643-CW
vs.	)	)
HEWLETT-PACKARD COMPANY,	)	) <b>DECLARATION IN SUPPORT OF</b>
Defendant.	)	) <b>PLAINTIFFS' AMENDED PATENT</b>
TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	) <b>DISCLOSURES PURSUANT TO P.R. 3-1</b>
Plaintiffs,	)	) <b>AND 3-2</b>
vs.	)	)
NEWEGG INC., et al.,	)	)
Defendants.	)	)
TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	)
Plaintiffs,	)	) Case Number: C 14-03645-CW
vs.	)	)
NEWEGG INC., et al.,	)	) <b>DECLARATION IN SUPPORT OF</b>
Defendants.	)	) <b>PLAINTIFFS' AMENDED PATENT</b>
TECHNOLOGY PROPERTIES LIMITED LLC and MCM PORTFOLIO LLC,	)	) <b>DISCLOSURES PURSUANT TO P.R. 3-1</b>
Plaintiffs,	)	) <b>AND 3-2</b>
vs.	)	)

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1 ) AND 3-2  
2 SEIKO EPSON CORPORATION, et al., )  
3 )  
Defendants. )  
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I, Michael P. Kella, declare as follows:

5 1. On Friday, September 18, 2015, the Court issued its claim construction order  
6 ("the Order") in the above-referenced matters.

7 2. Plaintiffs' counsel began reviewing and analyzing the Order immediately upon  
8 issuance.

9 3. That same day, Plaintiffs' counsel provided the Order to Plaintiffs' expert, Mr.  
10 Dale Buscaino, and requested his review and analysis.

11 4. On Monday, September 21, Plaintiffs' counsel began discussing the Order and the  
12 Court's claim construction with Plaintiffs' expert. Plaintiffs' counsel and Plaintiffs' expert also  
13 began discussing Plaintiffs' current contentions so that Plaintiffs could identify where it may be  
14 appropriate to expound upon Plaintiffs' current contentions in light of the Order.

15 5. After Plaintiffs' counsel and Plaintiffs' expert determined that there were claim  
16 elements for which it would be appropriate to expound upon Plaintiffs' current contentions in  
17 light of the Order, Plaintiffs' counsel immediately began working to complete the proposed  
18 amended infringement contentions.

19 6. On Wednesday, October 14, 2015—the same day that Plaintiffs completed the  
20 proposed amended infringement contentions—Plaintiffs served Defendants with the proposed  
21 amended contentions.

7. Although Plaintiffs diligently worked to provide Defendants with Plaintiffs' proposed amended contentions and did so just eighteen weekdays (less than thirty total days) after the Order, all of this took a significant amount of time and effort, including retrieving products from storage, taking high resolution photographs of their components, consulting with Plaintiffs' expert, review and analysis of technical subject matter, and drafting the amended contentions.

8. With service of Plaintiffs' proposed amended contentions, Plaintiffs reminded Defendants of Plaintiffs' desire to seek to leave to amend their contentions based on the Order and requested that Defendants please let Plaintiffs know whether Defendants consented to the proposed amended contentions.

9. Eight days later, on Thursday, October 22, 2015, Defendants informed Plaintiffs that they opposed Plaintiffs' amendments, stating that Defendants "disagree with Plaintiffs that they are necessitated by the Court's claim construction order." On the same day, Plaintiffs requested that Defendants please explain what they mean by this statement. Defendants responded, stating that "[w]hat it means is that Defendants disagree that Plaintiffs have good cause under L.R. 3-6 to make the proposed amendments based on the Court's claim constructions." Plaintiffs then immediately began preparing their motion to amend.

10. On the same day, having not received any explanation from Defendants as to why Defendants disagreed that Plaintiffs have good cause under Patent L.R. 3-6 to make the proposed amendments based on the Court's claim constructions, Plaintiffs requested that Defendants please explain the basis for their disagreement.

1           11. Defendants have never disputed that Plaintiffs have been diligent in seeking  
2 amendment.

3           12. On Friday, October 23, 2015, having not heard back from Defendants, Plaintiffs  
4 requested a meet and confer so that Plaintiffs could hear and understand Defendants' position  
5 that Plaintiffs do not have good cause in order to focus the issues for the Court in Plaintiffs'  
6 motion for leave. Defendants informed Plaintiffs that they were not available until next week.  
7 Because Plaintiffs did not want to delay in filing a motion for leave to amend, Plaintiffs  
8 proceeded to file their motion for leave to amend.

9           13. Attached to Plaintiffs' Administrative Motion to File Under Seal, (e.g., Case No.  
10 4:14-cv-03640-CW, Doc. 343), as Exhibits A, A-1 through 6, and A-11 through 18 are true and  
11 correct copies of Plaintiffs' proposed amendments in redline. Exhibit A is the amended P.R. 3-1  
12 and 3-2 cover pleading in redline form. Exhibits A-1 through 6 and A-11 through 18 are the  
13 amended contention chart exhibits attached thereto in redline form.

14           14. Attached to Plaintiffs' Administrative Motion to File Under Seal, (e.g., Case No.  
15 4:14-cv-03640-CW, Doc. 343), as Exhibits B, and B-1 through 6, and B-11 through 18 are true  
16 and correct copies of Plaintiffs' proposed amendments in clean form. Exhibit B is the amended  
17 P.R. 3-1 and 3-2 cover pleading in redline form. Exhibits B-1 through 6 and B-11 through 18 are  
18 the amended contention chart exhibits attached thereto in redline form.

19           15. All of the amendments are based solely on the Court's claim construction order  
20 and were precipitated by the Order adopting a construction that was different from Plaintiffs'  
21 proposed construction and 1) by the Order adopting a construction that was different from any  
22

1 party's proposed construction, 2) by the Order expounding upon or further defining a  
2 construction in a manner different from any party's proposed construction, or 3) by the need to  
3 address unresolved disputes that arose during briefing and at the claim construction hearing  
4 which the Order did not resolve.

5 I declare under penalty of perjury declare that the foregoing is true and correct and that  
6 this Declaration was executed this 23<sup>rd</sup> day of October 2015 in St. Louis, Missouri.  
7

8 Date: October 23, 2015

9 /s/ Michael P. Kella

10 Michael P. Kella

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DECLARATION OF MICHAEL P. KELLA IN SUPPORT OF  
PLAINTIFFS' MOTION FOR LEAVE TO AMEND  
THEIR INFRINGEMENT CONTENTIONS PURSUANT TO P.R. 3-6